No. 82-900

In the Supreme Court of the United States

OCTOBER TERM, 1982

CLIFTON RAY MIDDLETON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the classification of marijuana as a Schedule I controlled substance, 21 U.S.C. 812(c)(10), lacks a rational basis.

2. Whether the trial judge properly denied petitioner's claim that because he was a member of the Ethopian Zion Coptic Church the First Amendment's Free Exercise Clause prohibited his prosecution for importing and possessing marijuana.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-15) is reported at 690 F.2d 820.

JURISDICTION

The judgment of the court of appeals was entered on November 1, 1982. The petition for a writ of certiorari was filed on November 30, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of importation of marijuana, in violation of 21 U.S.C. 952(a) and 963; one count of possessing marijuana with intent to distribute, in violation of 21 U.S.C. 841 and 846; three counts of assaulting, resisting,

and impeding customs officers, in violation of 18 U.S.C. 111; and one count of bail jumping, in violation of 18 U.S.C. 3150.[1] He was sentenced to a total of two and one-half years' imprisonment. The court of appeals affirmed (Pet. App. 1-15).

1. The evidence adduced at trial showed that petitioner, a member of the Ethiopian Zion Coptic Church, flew from Jamaica to Miami on April 11, 1972. Upon his arrival, a customs inspector asked petitioner to accompany him to a room for a secondary search of his baggage. Petitioner fled the customs enclosure; he was pursued and caught by a number of customs personnel. When he was captured, petitioner attempted to fight off the law enforcement officers; he continued kicking and flailing as he was taken into the search room and later to a police station across the street. When petitioner was taken into custody, approximately three and one-half pounds of marijuana, including a package taped to his back (VII Tr. 80), were found in his possession. Pet. App. 4.

On April 14, 1972, petitioner was released on a $10,000 personal recognizance bond. He was subsequently arraigned on May 2 and trial was set for May 22, 1972. Petitioner failed to appear for trial on that date, however, and he remained a fugitive until his arrest in 1979 in connection with an indictment in another case.

2. Prior to trial, petitioner moved to dismiss his indictment on the grounds that the statutory prohibitions relating to marijuana are unconstitutional per se and that those

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[1]Petitioner was indicted on April 20, 1972, on two counts of importing and possessing marijuana and on five counts of resisting customs officers (Counts III-VII). He subsequently was indicted for bail jumping. At trial, the district court directed a verdict of not guilty on one of the importation counts and the jury acquitted petitioner on one of the counts of resisting customs officers.

prohibitions should not apply to him because of his membership in the Ethopian Zion Coptic Church. The trial judge denied this motion, petitioner was convicted, and the court of appeals affirmed.

ARGUMENT

1. Petitioner first contends (Pet. 3-11) that the inclusion of marijuana as a Schedule I controlled substance under 21 U.S.C. 812(c)(10) is arbitrary and irrational. Both courts below, however, correctly rejected this threadbare challenge to the constitutionality of the criminal statutes dealing with marijuana.

As the court of appeals recognized (Pet. App. 6), federal statutes are presumptively valid unless it is shown that the statute in question bears no rational relationship to a legitimate legislative purpose. See *Lewis* v. *United States*, 445 U.S. 55, 56 (1980); *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979). And this Court has noted that "legislative classifications need not be perfect or ideal." *Marshall* v. *United States*, 414 U.S. 417, 428 (1974). In language particularly appropriate here, this Court has observed that "[w]hen Congress undertakes to act in areas fraught with medical and scientic uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation, even assuming, *arguendo*, that judges with more direct exposure to the problem might make wiser choices." *Id.* at 427.[2]

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[2]As the court of appeals noted (Pet. App. 8-9), when Congress enacted the Comprehensive Drug Abuse Prevention and Control Act in 1970, Pub. L. No. 90-513, 84 Stat. 1236, it recognized that there was a divergence of opinion on the extent to which marijuana should be controlled. See H.R. Rep. No. 91-1444 (Pt. 1), 91st Cong., 2d Sess. 12 (1970).

In light of these principles, the courts uniformly have rejected challenges similar to those petitioner advances here. *E.g., National Organization for the Reform of Marijuana Laws* v. *Bell*, 488 F. Supp. 123 (D.D.C. 1980) (three-judge district court); *United States* v. *Miroyan*, 577 F.2d 489, 495 (9th Cir.), cert. denied, 439 U.S. 896 (1978); *United States* v. *Gramlich*, 551 F.2d 1359, 1364 (5th Cir.), cert. denied, 434 U.S. 866 (1977); *United States* v. *Rogers*, 549 F.2d 107 (9th Cir. 1976); *United States* v. *LaFroscia*, 354 F. Supp. 1338 (S.D.N.Y.), aff'd, 485 F.2d 457 (2d Cir. 1973); *United States* v. *Spann*, 515 F.2d 579 (10th Cir. 1975); *United States* v. *Rodriquez-Camacho*, 468 F.2d 1220 (9th Cir. 1972), cert. denied, 410 U.S. 985 (1973). In the face of these settled principles and the drug's widespread abuse, it is clear that petitioner has not shown that the classification of marijuana under Schedule I is irrational or unreasonable.[3]

Moreover, we note that while 21 U.S.C. (& Supp. V) 811 provides a legislatively approved means for the Attorney General to reclassify marijuana, he is not required to do so. See *United States* v. *Alexander*, 673 F.2d 287, 289 (9th Cir. 1982); *United States* v. *Erwin*, 602 F.2d 1183, 1185 (5th Cir. 1979), cert. denied, 444 U.S. 1017 (1980); *National Organization for the Reform of Marijuana Laws* v. *DEA*, 559 F.2d 735 (D.C. Cir. 1977). Thus, any effort to alter the classification of marijuana should be addressed to the

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[3]"Furthermore the United States is a party to the Single Convention on Narcotic Drugs [18 U.S.T. 1407, T.I.A.S. No. 6298, New York March 30, 1961, ratified by the United States, 1967] binding *inter alia*, all signatories to control persons and enterprises engaged in the manufacture, trade and distribution of specified drugs. Marijuana (cannabis) is so specified." *United States* v. *Rodriquez-Camacho*, *supra*, 468 F.2d at 1222. Therefore, the government has an alternative basis for marijuana's control and classification. See 21 U.S.C. (Supp. V) 811(d).

Attorney General or the legislature. See *United States* v. *Pastor*, 557 F.2d 930, 941 (2d Cir. 1977); *United States* v. *Rodriquez-Camacho, supra*, 468 F.2d at 1222.[4]

2. Petitioner next contends (Pet. 11-21) that, as applied to him, the statutes prohibiting the importation and possession of marijuana violate the Free Exercise Clause of the First Amendment because he is a member of the Ethopian Zion Coptic Church, an organization that espouses marijuana use as part of its religious practice. The court below correctly rejected this claim as without merit.

This Court has long recognized that not all burdens on religion are unconstitutional. See *United States* v. *Lee*, 455 U.S. 252, 257 (1982); *Davis* v. *Beason*, 133 U.S. 333, 345 (1890) ("Crime is not the less odious because sanctioned by what any particular sect may designate as religion"). The court below correctly recognized (Pet. App. 12) that a statute may properly be subject to a balancing process when it impinges upon fundamental rights protected by the Free Exercise Clause. See *Wisconsin* v. *Yoder*, 406 U.S. 205, 214, 215 (1972); cf. *United States* v. *Lee, supra*.

The courts have also held uniformly that Congress may constitutionally control the use, even for religious purposes, of drugs that it determines to be dangerous. *Leary* v.

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[4]With respect to *National Organization for the Reform of Marijuana Laws* v. *DEA, supra*, on which petitioner relies (Pet. 10), we note that case was a civil action seeking marijuana's reclassification. In the instant case, however, petitioner committed a criminal offense and now seeks to challenge the statute under which he was found guilty. He thus can take no solace in the fact that the District of Columbia Circuit there ordered the DEA to conduct hearings concerning marijuana's classification. Moreover, in a later case, a three-judge district court recognized that the continuing debate over the long-term medical effects of marijuana alone justified its legislative classification. *National Organization for the Reform of Marijuana Laws* v. *Bell, supra*, 488 F. Supp. at 136.

United States, 383 F.2d 851 (5th Cir. 1967), rev'd on other grounds, 395 U.S. 6 (1969). See also *Native American Church* v. *United States*, 468 F. Supp. 1247, 1249 (S.D. N.Y. 1979), aff'd, 633 F.2d 205 (2d Cir. 1980); *United States* v. *Hudson*, 431 F.2d 468 (5th Cir. 1970), cert. denied, 400 U.S. 1011 (1971); *Randall* v. *Wyrick*, 441 F. Supp. 312 (W.D. Mo. 1977); *United States* v. *Kuch*, 288 F. Supp. 439 (D.D.C. 1968). In *Leary*, the Fifth Circuit carefully considered the legality of drug use as part of religious practice in light of the decisions of this Court. The court there held that the government had both the power and the duty to control the use of marijuana. It also observed that the paramount governmental interest in protecting society overrode any interest — even if religiously motivated —that the defendant might have had. 383 F.2d at 860. See also *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Jacobson* v. *Massachusetts*, 197 U.S. 11 (1905); *Reynolds* v. *United States*, 98 U.S. 145 (1878).

The state interest involved in *Wisconsin* v. *Yoder*, *supra*, (compulsory state education requirement as applied to Amish children) cannot be equated with the government's compelling interest in controlling the dissemination of substances such as marijuana. The universal and serious problem of drugs requires a comprehensive response. See *United States* v. *Lee*, *supra* (social security taxes applicable to Amish employer). Accordingly, as the court below found, the government's interest in protecting society far outweighed petitioner's purported interest in using marijuana as part of his religious practice.[5]

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[5]Even if members of petitioner's church enjoyed a right to use marijuana, petitioner was not convicted of using the substance, but of importing it and possessing it with intent to distribute, both quite a different matter. Cf. *Stanley* v. *Georgia*, 394 U.S. 557 (1969).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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